IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 758 OF 1995

WITH

CIVIL APPLICATION NO. 1040 OF 2005

Maharashtra State Road
Transport Corporation ..Appellants

versus

Zarina Hajaratkhan Pathan
& Ors. ..Respondents

Mr. G. S. Hegde for the Appellants.
None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST APRIL,2005

ORAL ORDER :

1. This Civil Application is taken out for restoration of the appeal which was dismissed for default by me on 24.1.2005. Sufficient cause for remaining absent on 24.1.2005 is shown, hence Civil Application is allowed. Appeal is restored to file.

2. Heard Mr. Hegde for the appellants. Nobody is present for the respondents. This appeal is

filed by Maharashtra State Road Transport Corporation against the Award of MACT, Solapur, dated 29.8.1994. That award was made in group of Claim Petitions. This Appeal arise out of Claim Petition No. 231 of 1988 in which the appellants were held liable for payment of Rs.50,510/- with interest at the rate of 12% from the date of presentation of the petition till realisation of the amount within three months from the date of award and in default interest at the rate of 15% on the amount.

3. Accident in this case occurred in the following manner:

. Accident took place on 14.8.1988 on Solapur Barshi Road. The deceased Hajaratkhan Dautkhan Pathan with Sayyed Altar Chandsaheb and Abdul Majid Alisab had gone to village Nannaj in auto rickshaw No.MWC-124. They were returning back to Solapur after their work by the said auto rickshaw which was passing by the left side of the road. Original Respondent No.1 was driving the ST bus No.MTD-9907 rashly and negligently and therefore the accident occurred. The Tribunal held that the S.T. driver - original respondent was negligent to the extent of 30% and rickshaw driver was negligent to the extent of 70% and therefore fixed the liability, which is

under challenge in this appeal.

4. Counsel for the appellants contended that this was a case where driver of the ST bus could not at all be held responsible to any extent. He drew my attention to the evidence on record and the panchnama in support of his contention. It is therefore necessary to see as to what is the evidence about the accident. It is pertinent to note that the claimants did not examine anybody to prove the negligence of the driver or prove the manner in which the accident took place.

5. One Zarina wife of the deceased was examined. She had no personal knowledge about the accident and one Vithalsingh was examined to prove the earning of the deceased. He had also no personal knowledge. Therefore, what remains on record is the panchanam and the evidence of driver of the ST bus. What he has stated is that he started from S.T. stand Solapur at 11.30 a.m. for Barshi. His bus reached near Bale Village and he was about to cross one small bridge. It was a cannel bridge. One bus in route from Kawathale to Solapur was coming from the opposite direction. It was approaching the channel bridge. This driver Jafarsab gave signal by hand and also put on light signal to allow him to enter and cross the bridge

first. When he crossed the bridge, one rickshaw came from the backside of the incoming bus and gave dash to his bus. It was a mistake of the rickshaw driver. Counsel for the appellants therefore contended on the basis of this evidence that in view of this evidence, to which there is no effective cross examination, and no evidence to contradict, the driver of the ST bus could not be held negligent even to the extent of 30%. He drew my attention to the panchnama, where width of the road is shown as 18 feet and there is kacha road either side of the tar road of 1 ft. width. Driver side wheel of the ST bus was on the kacha road at the distance of 2 feet from the edge of the tar road and the driver side headlight of the bus was damaged. Blood stains were seen on the bumper side of the driver of the bus, break marks of the bus were seen on the southern side and also on the northern side and break marks of the rickshaw were also seen but they were to the left side of the road and therefore the Tribunal held that the driver was negligent.

6. As against this, one more witness Hajangir Hanif Shaikh was examined on behalf of the claimants as witness No.3. He was carrying gunny bags of vegetables on his bicycle, he saw that the auto rickshaw was going ahead, he was following auto rickshaw, one ST bus was coming from his back side,

the said ST bus over took auto rickshaw and one ST bus Solapur - Barshi was coming from Solapur side was in a high speed. One Barshi Solapur bus had passed by the side of Solapur - Barshi bus and gave dash to the auto rickshaw. The witness in the cross examination admitted that there is a small bridge near the spot of the accident. Two heavy vehicles cannot pass at one and the same time by the said bridge. He has stated that when auto rickshaw reached near the bridge, Solapur-Barshi bus i.e. the present bus was on the other side of the bridge.

7. Counsel for the appellants contended that this witness is a got up witness because he never came forward as a witness to the accident before the police. His statement was not recorded and he did not give any information to the police about the accident. Therefore, according to him, no reliance can be placed upon this evidence. Tribunal as stated by me earlier held that the auto rickshaw was completely on the wrong side and Tribunal also found from the statement of the witnesses that all persons in the auto rickshaw including the driver had consumed liquor. Of course those persons whose statements were so recorded were not examined and therefore their statements could not be made the basis for coming to any conclusion. But the fact remains that the incident took place, S.T. bus had

passed the bridge and when suddenly auto rickshaw came from behind the other stationary bus, then it could not be said therefore that driver of ST bus was responsible. In view of the above the appeal is required to be allowed. Hence, order:

ORDER

. Appeal is allowed.

. Impugned order of the Tribunal is set aside. Claim Petition is dismissed.

. No order as to costs.

1.04.2005 (D.G. DESHPANDE, J.)